

Amendment No. 1 to HB3333

Hargrove
Signature of Sponsor

FILED

Date _____

Time _____

Clerk _____

Comm. Amdt. _____

AMEND Senate Bill No. 3088*

House Bill No. 3333

by deleting all language after the enacting clause and by substituting instead the following:

SECTION 1. Tennessee Code Annotated, Section 62-37-103, is amended by deleting subdivision (3) in its entirety.

SECTION 2. Tennessee Code Annotated, Section 62-37-103, is amended by adding the following language as a new, appropriately designated subdivision:

() "Board" means the Tennessee residential and home improvement contractor's board;

SECTION 3. Tennessee Code Annotated, Title 62, Chapter 37, Part 1, is amended by deleting the word "commission" wherever it appears and by substituting instead the word "board".

SECTION 4. Tennessee Code Annotated, Section 62-37-116, is amended by deleting subsection (a) in its entirety, and by substituting instead the following language:

(a)

(1) There is created a residential and home improvement contractor's board, hereinafter called the "board" to be appointed by the governor. The board shall be composed of three (3) residential contractors, three (3) home improvement contractors and one (1) public member. Except for the initial appointments, each member shall be appointed for a four-year term and serve until such member's successor is appointed and qualified. Notwithstanding the limitation of a seven (7) member board created by this section, those persons serving on the home improvement commission on the effective date of this act and the three (3) residential contractors who are serving on the contractor's licensing board on the effective date of this act shall constitute the initial

residential and home improvement contractor's board. When the term of office of the first public member expires, that position shall be eliminated.

(2) For each member appointed to the board who is a residential contractor, the Home Builders Association of Tennessee, Inc. shall submit a list of recommended persons to the governor, and the governor shall consult with the Home Builders Association of Tennessee, Inc. about its recommendations before making any such appointment.

(3) As terms expire, the governor shall make appointments for terms of office of the various members to provide for staggered terms. Thereafter all appointments shall be for a four (4) year term.

SECTION 5. Tennessee Code Annotated, Title 62, Chapter 37, Part 1, is amended by adding the following language as new, appropriately designated section:

Section _____. The board shall appoint an executive director to provide all administrative functions for the board. The compensation of the executive director shall be fixed by the board and the director shall serve at the pleasure of the board.

SECTION 6. Tennessee Code Annotated, Section 62-37-117, is amended in subdivision (1) by deleting the language "rules and regulations adopted" and by substituting instead the language "rules and regulations adopted by the board".

SECTION 7. Tennessee Code Annotated, Section 4-29-229(32), is amended by deleting the subdivision in its entirety and by substituting instead the following language:

(32) Residential and home improvement contractor's board, created by §62-37-116;

SECTION 8. Tennessee Code Annotated, Title 62, Chapter 37, Part 1, is amended by adding the following language as a new, appropriately designated section:

Section _____. All rules, regulations, orders, and decisions issued or promulgated by or on behalf of the home improvement commission or by the contractor's licensing board which relate to residential contractors shall remain in

full force and effect, and shall be administered and enforced by the board. The board shall have the authority to modify or repeal orders or rules and regulations previously issued and to adopt, issue, or promulgate new orders or rules and regulations as may be necessary.

SECTION 9. Tennessee Code Annotated, Section 62-6-102, is amended by:

- (1) deleting the language “or (6)” from subdivision (2); and
- (2) deleting subdivisions (3)(D) and (6) in their entirety.

SECTION 10. Tennessee Code Annotated, Section 62-37-103, is amended by adding the following language as new, appropriately designated subdivisions:

() "Residential contractor" means a contractor whose services are limited to construction, remodeling, repair, or improvement of one (1), two (2), three (3), or four (4) family unit residences not exceeding three (3) stories in height and accessory use structures in connection therewith the total cost of which is twenty-five thousand dollars (\$25,000) or more.

SECTION 11. Tennessee Code Annotated, Section 62-37-107(4), is amended by deleting the language “residential or”.

SECTION 12. Tennessee Code Annotated, Section 62-6-103, is amended by deleting the section in its entirety and by substituting instead the following language:

(a) Any person, firm or corporation engaged in commercial building contracting in this state shall be required to submit evidence of qualification to engage in such contracting, and shall be licensed as hereinafter provided. It is unlawful for any person, firm or corporation to engage in or offer to engage in commercial building contracting in the state, unless such person, firm or corporation has been duly licensed under the provisions of this chapter, as hereinafter provided. Any person, firm or corporation engaged in commercial building contracting shall be required to submit evidence of qualification to engage in commercial building contracting, and shall be licensed. It is unlawful for any person, firm, or corporation to engage in, or offer to engage in,

commercial building contracting as hereinabove described, unless such person, firm or corporation has been duly licensed under the provisions of this chapter.

(b) Any unlicensed contractor covered by the provisions of this chapter shall be permitted in a court of equity to recover actual documented expenses only upon a showing of clear and convincing proof.

SECTION 13. Tennessee Code Annotated, Section 62-6-111(j), is amended by adding the following language as a new, appropriately designated subdivision:

() Notwithstanding the provisions of this subsection, any single residence homeowner is exempt from the limited licensed electrician requirements of this chapter for purposes of performing electrical work on such homeowner's own residence.

SECTION 14. Tennessee Code Annotated, Section 62-37-104, is amended by adding the following language as new, appropriately designated subsections.

()

(1) Corporations and partnerships may engage in the business of residential contracting; provided, that at least one (1) of the major stockholders or partners or full-time employee with a written power of attorney to bind the corporation or partnership has sufficient knowledge of the construction business in which such persons are licensed to perform. If the person who took the examination for the partnership or corporation leaves the firm for any reason, the partnership or corporation must designate an individual to take the examination within three (3) months.

(2) Any person, firm or corporation desiring to engage in residential contracting shall be required to submit evidence of qualification to engage in residential contracting. Such person firm or corporation shall make written application to the board on such forms and in such manner as are prescribed by the board. The application shall be accompanied by an application fee as set by the board. The application shall also be accompanied by evidence of the

applicant's current workers' compensation insurance coverage. Failure to provide such evidence of insurance coverage shall make the applicant ineligible for licensure by the board until such evidence of insurance coverage is provided.

(3) If the application is satisfactory to the board, then the applicant is entitled to an examination to determine the applicant's qualifications. This examination may be written and/or oral. The board is entitled to charge each applicant an examination fee as set by the board for each written and/or oral examination.

(4) If the results of the examination of any applicant are satisfactory to the board, then it shall issue to the applicant a certificate authorizing the applicant to operate as a residential contractor in this state.

(5) Whenever any applicant is advised to appear before the board for an interview and fails to appear at the scheduled time and place without notifying the board at least three (3) days in advance, such applicant shall pay an additional fee as set by the board before being rescheduled for interview. In the event of failure to appear for interview on three (3) separate occasions, a new application and fee are required.

(6) It is unlawful for any person, firm, or corporation to engage in, or offer to engage in, residential contracting as hereinabove described, unless such person, firm or corporation has been duly licensed under the provisions of this chapter.

(7)

(A) Notwithstanding the foregoing provisions, any person, firm or church that owns property and constructs thereon single residences, farm buildings or other buildings for individual use, and not for resale, lease, rent or other similar purpose, is exempt from the requirements of this chapter.

(B) Except in counties with a population of not less than seven hundred seventy-seven thousand one hundred thirteen (777,113) according to the 1980 federal census or any subsequent federal census, a person or firm specified in subdivision (A) shall not make more than one (1) application for a permit to construct a single residence or shall not construct more than one (1) single residence within a period of two (2) years. There shall be a rebuttable presumption that such person or firm intends to construct for the purpose of resale, lease, rent or any other similar purpose if more than one (1) application is made for a permit to construct a single residence or if more than one (1) single residence is constructed within a period of two (2) years. No provision of this subdivision shall be construed to alter the definition of "residential contractor" as defined in this act.

(8) Notwithstanding the foregoing, the license requirements and restrictions contained in this section shall not apply to single residences constructed by:

(A) Nonprofit charitable or religious corporations, associations and organizations which are exempt from federal income taxation under § 501(c)(3) of the Internal Revenue Code of 1986 (26 U.S.C. § 501(c)(3)), as amended; or

(B) Students enrolled in educational institutions who construct such residences under the direct supervision of faculty as part of the curriculum of the institution.

(___) Any unlicensed residential contractor covered by the provisions of this chapter shall be permitted in a court of equity to recover actual documented expenses only upon a showing of clear and convincing proof.

(___) Notwithstanding any provision of this chapter to the contrary, the board may promulgate rules or regulations establishing subclassifications within the residential

construction classification for which a limited license may be issued to an applicant who has successfully completed a seminar sponsored by the board in lieu of the written and/or oral examination and who has otherwise complied with the requirements of this chapter.

SECTION 15. Tennessee Code Annotated, Section 62-37-108(a), is amended by deleting the language "An application for an original license" and by substituting instead the language "With respect to a home improvement contractor license, an application for an original license".

SECTION 16. Tennessee Code Annotated, Section 62-37-108(e), is amended by deleting the subsection in its entirety.

SECTION 17. Tennessee Code Annotated, Section 62-37-108(h), is amended by deleting in the first sentence the language "a contractor's license" and by substituting instead the language "a home improvement contractor's license".

SECTION 18. Tennessee Code Annotated, Section 62-6-104(a), is amended by deleting the subsection in its entirety, and by substituting instead the following language:

(a) There is created a state board for licensing contractors, hereinafter called the "board" to be appointed by the governor. The board shall be composed of seven (7) members, all of whom shall be residents of this state at least two (2) of whom shall be actively engaged as commercial building contractors, at least one (1) of whom shall be actively engaged as a mechanical contractor, at least one (1) of whom shall be actively engaged as an electrical contractor, at least one (1) of whom shall be actively engaged as a highway, railroad or airport contractor, at least one (1) of whom shall be actively engaged as an industrial contractor; and at least one (1) of whom shall be a person who is not engaged as a contractor in any county of this state. All board members who are required to be in the business of contracting shall have been actively engaged in the business for a period of not less than ten (10) years immediately preceding their appointment and shall be licensed in the classification in which

such member is serving upon the board. There shall be no more than one (1) board member in any specific classification provided hereinabove residing within any one (1) grand division of this state and no more than three (3) board members residing in any one (1) grand division. In making appointments to the board, the governor shall strive to ensure that at least one (1) person serving on the board is sixty (60) years of age or older and that at least one (1) person serving on the board is a member of a racial minority. The board members who on the effective date of this act are serving as the commercial building contractors, the mechanical contractor, the electrical contractor, the highway, railroad or airport contractor, and the person who is not engaged as a contractor in any county of this state shall continue to serve on the board until the expiration of the terms to which they were appointed and shall constitute the board until the person engaged as an industrial contractor is appointed to serve on the board.

SECTION 19. Tennessee Code Annotated, Section 62-6-112(a), is amended by deleting the language “nine (9)” and by substituting instead the language “eight (8)”; by deleting the language “; and” at the end of subdivision (8) and substituting instead a period, and by deleting subdivision (9) in its entirety.

SECTION 20. Tennessee Code Annotated, Section 62-6-112(e), is amended by deleting the subsection in its entirety.

SECTION 21. Tennessee Code Annotated, Section 62-6-128, is amended by deleting the section in its entirety.

SECTION 22. Tennessee Code Annotated, Title 62, Chapter 37, Part 1, is amended by adding the following language as a new, appropriately designated section:

Section _____. Notwithstanding any provision of title 66, chapter 11, or any other provision of the law to the contrary, the provisions of title 66, chapter 11, shall not be available on single family residential construction to any person, firm or corporation who performs residential construction, and who is required to be

licensed as a contractor pursuant to the provisions of this chapter, and fails to have a valid license when acting as a contractor.

SECTION 23. Tennessee Code Annotated, Section 62-6-133 and Section 62-6-134, are amended by deleting the sections in their entirety.

SECTION 24. Tennessee Code Annotated, Title 62, Chapter 37, Part 1, is amended by adding the following new sections thereto:

Section 62-37-136.

(a) The following acts are prohibited by a residential contractor:

(1) Having a controlling ownership interest in the lender providing a mortgage loan for home improvement for the work being performed by the contractor; or

(2) Being a co-signer or acting as a guarantor for a mortgage loan for home improvement.

(b) As used in this section, "mortgage loan for home improvement" shall have the same meaning as defined in § 45-13-123(c).

Section 62-37-137.

(a) For each violation of §62-37-136 by a residential contractor, the board is authorized to impose a civil penalty in an amount not to exceed twenty-five thousand dollars (\$25,000) after notice and an opportunity for a hearing. Such penalty shall be in addition to any other penalty authorized pursuant to this part.

(b) In addition to the civil penalty authorized pursuant to subsection (a), a violation of §62-37-136 shall be construed to constitute an unfair or deceptive act or practice affecting the conduct of trade or commerce under the Tennessee Consumer Protection Act, compiled in title 47, chapter 18, part 1, and as such the private right of action remedy under such act shall be available to any person who suffers an ascertainable loss of money or property, real, personal, or mixed, or any other article, commodity, or thing of value wherever situated as a result of such violation.

Section ____.

(a)

(1) The board may promulgate rules and regulations to establish monetary limitations for persons, firms or corporations seeking licensure as a residential contractor. The board shall have discretionary authority in individual cases to modify such criteria for an applicant if the public safety and welfare clearly require such modification and if the board furnishes the applicant with a written statement justifying such modification.

(2) The criteria so established by the board shall include, but not be limited to, a letter of reference from a past client, employer of the applicant or codes administration official as well as a financial statement of the applicant.

(3) If an applicant requests a monetary limitation of greater than one million five hundred thousand dollars (\$1,500,000), the applicant's financial statement shall be audited and attested to by a certified public accountant.

(4) The financial statement of any applicant requesting a monetary limitation of one million five hundred thousand dollars (\$1,500,000) or less shall be either reviewed or audited by a certified public accountant. The board may, in its discretion, require the financial statement of such an applicant be audited and attested to by a certified public accountant.

(b) The issuance by the board of a certificate of license authorizing the licensee to engage in residential contracting shall not authorize the licensee to engage in twenty-five thousand dollars (\$25,000) or more of any other major construction classification or specialty classification for licenses issues by the state board for licensing contractors unless the licensee is additionally licensed in such other major construction classification or specialty classification thereunder by the state board for licensing contractors.

(c)

(1) Whenever a partnership licensed as a residential contractor dissolves, no former member of the partnership shall further undertake contracting before filing a new application with the board and receiving a license.

(2) In case of a merger, purchase by nonstockholders of the majority interest, or reorganization pursuant to a bankruptcy proceeding, of any corporation engaged in residential contracting, the corporation shall make written application to the board and obtain a new license before undertaking contracting.

(d)

(1) Upon application for a residential contractor license of any individual who was formerly a partner in a dissolved partnership, the board shall transfer to such individual the license formerly held by the partnership upon a showing that:

(A) The individual was a partner in a dissolved partnership;

(B) The current financial statement of such individual meets the requirements promulgated by the board. If such financial statement fails to meet such requirements, the board may in its sole discretion modify the monetary limitation prior to transfer; and

(C) All liabilities of the partnership were satisfied prior to dissolution or will be satisfied by the individual.

(2) The board for transferring such residential contractor license shall collect a fee as set by the board.

(e)

(1) The board shall transfer, upon application and payment of a fee as set by the board, by any proprietorship or partnership which subsequently incorporates as a Tennessee corporation, the residential contractor license formerly held by such proprietorship or partnership to such corporation upon a showing that:

(A) The officers or directors or management of the corporation were the owners or managers of the proprietorship or partnership;

(B) A copy of the corporation's charter has been filed with the board;

(C) The partnership or proprietorship is currently in good standing with the board;

(D) The current financial statement of such corporation meets the requirements promulgated by the board. If such financial statement fails to meet such requirements, the board may in its sole discretion modify the monetary limitation prior to transfer; and

(E) All liabilities of the proprietorship or partnership were satisfied prior to incorporation or will be satisfied by the corporation.

(2) The board shall develop an application for such transfer of a residential contractor license.

(f) Notwithstanding the provisions of § 56-1-302(7) to the contrary, all revenues generated from fees, penalties, or interest shall be allocated solely to the residential and home improvement contractor's board to be utilized for the administration and enforcement of this chapter.

(g)

(1) Notwithstanding any provision of the law to the contrary, the board may issue a license to any person who establishes such person's competency in residential contracting by successfully passing a proficiency test or examination for measuring of industry expertise in such work that is administered by the board, and such license shall authorize the licensee to engage in contracting in this state or any of its political subdivisions.

(2) Such licensee shall be eligible to contract for such work in any county or municipality upon:

(A) Exhibiting evidence of a current certificate of license to the appropriate local officials;

(B) Paying any local licensing fees in effect on May 8, 1992; and

(C) Paying any inspection or permit fees customarily required by any county or municipality for such work. No county or municipality shall require such state licensee or its employees to pass any county or municipal test or examination; nor shall a county or municipality impose any additional requirements upon such state licensee or its employees, nor in any way discriminate against such state licensee or its employees on the basis of the licensee's nonresidency within the county or municipality.

(h)

(1) A licensee may request the board to consider revision of the licensee's monetary limitation at any of its regular meetings. Such request shall be made by letter, which shall be accompanied by financial, equipment, and experience statements relative to the classification request accurate as of no more than twelve (12) months prior to the date of the request. The request must be received in the office of the board by the last day of the month before the month in which it is to be considered.

(2) If an applicant requests a change in monetary limitation to an amount of one million five hundred thousand dollars (\$1,500,000) or less, the applicant shall submit a financial statement that has been reviewed or audited by a certified public accountant. If an applicant requests a change in monetary limitation to an amount greater than one million five hundred thousand dollars (\$1,500,000), the applicant shall submit a financial statement that has been audited and attested to by a certified public accountant.

(3) The board reserves the right to consider a request for change of monetary limitation at any time, if consideration of the request at the regularly scheduled meeting would cause an undue hardship on the owner and be in the best interest of the public safety and welfare.

(4) Increases within the first year will not be allowed without special permission from the board.

SECTION 25. Tennessee Code Annotated, Title 62, Chapter 37, is amended by adding the following language as a new Part 2:

Section 62-37-201.

(a)

(1) The director of the board, acting on behalf of the board, is authorized to issue citations against persons acting in the capacity of or engaging in the business of a residential contractor or a home improvement contractor without a license in violation of § 62-37-104.

(2) Each citation shall be in writing and shall describe with particularity the basis of the citation.

(3) Each citation shall contain an order to cease all violations of this chapter and an assessment of a civil penalty in an amount not less than fifty dollars (\$50.00) nor more than one thousand dollars (\$1,000).

(b) The board shall promulgate rules and regulations to specify those conditions necessary to the issuance of a citation, and the range of penalties for violations of this chapter.

(c) The sanctions authorized pursuant to this part shall be in addition to any other remedies, civil and criminal, available to any person harmed by a violation of this chapter.

62-37-202. Service of a citation issued pursuant to § 62-37-201 may be made by certified mail at the last known business address or residence address of the person cited.

62-37-203. A citation issued pursuant to § 62-37-201 shall be issued by the director within one (1) year after the act or omission which is the basis for the citation.

62-37-204. Any person served with a citation pursuant to § 62-37-201 may appeal to the director by written notice postmarked within fifteen (15) working days after service of the citation with respect to violations alleged, scope of the order, or amount of civil penalty assessed.

62-37-205. If a person cited timely notifies the director that such person intends to contest the citation, the director shall afford an opportunity for a contested case hearing pursuant to the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, part 3.

62-37-206. After all administrative appeals have been exhausted, the director may apply to the appropriate court for a judgment in an amount of the civil penalty, plus applicable court costs, and for an order to cease activities in violation of § 62-37-104. The motion for the order, which shall include a certified copy of the final order of the hearing officer or administrative judge, shall constitute a sufficient showing to warrant the issuance of the judgment and order.

62-37-207.

(a) Notwithstanding any other provision of law to the contrary, the director may waive part of the civil penalty if the person against whom the civil penalty is assessed satisfactorily completes all the requirements for, and is issued, a license as a residential contractor or a home improvement contractor.

(b) Any outstanding injury to the public shall be settled satisfactorily before a license as a residential contractor or a home improvement contractor is issued.

SECTION 26. Tennessee Code Annotated, Section 62-37-109, is amended by deleting the section in its entirety and by substituting instead the following language:

(a) All licenses, except temporary licenses, shall expire the last day of the twenty-fourth month following its issuance or renewal, and becomes invalid on such date unless renewed.

(b) No home improvement contractor license shall be assignable or transferable except as hereinafter provided. A license to conduct a home improvement business issued to an individual may be assigned or transferred for the remainder of the license period to a partnership or stockholder of such corporation owning not less than twenty-five percent (25%) of the outstanding stock at the time of such assignment or transfer. A license issued to a partnership to conduct a home improvement business may be assigned or transferred for the remainder of the license period to any one (1) member of such partnership; provided, that such member obtains the consent of all of the other members of such partnership. The application for such transfer or assignment must be accompanied by proof satisfactory to the board that the requirements herein provided have been complied with. No assignment or transfer shall become effective unless and until the endorsement of the transfer or assignment has been made on the face of the license by the director and such license, so endorsed, has been returned to the assignee or transferee. All such endorsements shall be made without payment of any fee.

(c) Any license, except a temporary license, which has not been suspended or revoked, may, upon the payment of the renewal fee prescribed by this chapter, be renewed for an additional period of twenty-four (24) months from its expiration, upon the filing of an application for such renewal, on a form to be prescribed by the board. The form shall include a statement to be completed by the applicant indicating all material changes from the original application for a license. A penalty fee of ten dollars (\$10.00) per month, not to exceed thirty dollars (\$30.00), will be assessed on any renewal application postmarked after the date of expiration. No renewal application will be accepted more than ninety (90) days after the expiration of the license.

(d) A duplicate license may be issued for one lost, destroyed or mutilated upon application therefor on a form prescribed by the board and the payment of the fee prescribed by this chapter. Each such duplicate license shall have the word "duplicate" stamped across the face thereof and shall bear the same number as the one it replaces.

(e) Renewal notices shall be mailed ninety (90) days prior to the expiration date of the license. Such renewal must be received in the office of the board thirty (30) days prior to the expiration of such license.

(f) Renewal may be effected at any time during the thirty (30) days prior to the expiration of the license by filing with the board a financial statement, a report of any personal or corporate bankruptcies, and other such information as the board may require, and by the payment of a fee as set by the board, and by submitting evidence of the applicant's current workers' compensation insurance coverage. Failure to provide such evidence shall make the applicant ineligible for renewal until such evidence of insurance coverage is provided.

(g) A renewal application for a monetary limitation greater than one million five hundred thousand dollars (\$1,500,000) for a residential contractor shall be accompanied by a reviewed or audited financial statement prepared by a certified public accountant. If a renewal applicant requests a monetary limitation of one million five hundred thousand dollars (\$1,500,000) or less, the applicant shall submit a notarized statement that the information contained in the financial statement is true and correct.

(h) It is the duty of the executive director to notify by mail every person licensed hereunder of the date of expiration of this certificate of license and the amount of fee required for its renewal for two (2) years. Such notice shall be mailed in accordance with this section.

(i) The fee to be paid for the renewal of a certificate of license after the expiration date shall be increased ten percent (10%) for each month or fraction of a month that payment for renewal is delayed. The maximum fee for a delayed renewal shall not exceed twice the normal fee.

(j) No contractor shall be qualified to receive a renewal license when such contractor has been in default in complying with the provisions of this chapter for a period of one (1) year, and in such event the contractor, in order to qualify under the law, shall make a new application as in the case of the issuance of the original license.

(k) The board shall promulgate rules and regulations which establishes a method for identifying those licensees applying for renewal who may require a greater degree of scrutiny by the board than usual.

(l) The financial statements submitted by contractors shall be treated as confidential and shall be used by the board only for the purposes of determining the qualifications of applicants for licenses and the monetary limitations.

(m) The comptroller of the treasury or the comptroller's designated representative shall be accorded access to and may examine any financial statement solely for the purpose of a legitimate audit, § 10-7-508 to the contrary notwithstanding.

Section _____. Any certificate of license issued by the board to any person now in any branch of the armed service of the United States, or who hereafter enlists or is called into service, remains in full force and effect until one (1) year after the person is discharged from service and is subject to renewal at that time by the payment of the annual fee set out in this chapter.

Section _____.

(a)

(1) Whenever any person, firm or corporation claims to have been damaged or injured by the gross negligence, incompetency, fraud, dishonest dealing and/or misconduct in the practice of contracting on the part of any person, firm or corporation licensed hereunder, files suit upon such claim in any of the courts of record in this state, and recovers judgment thereon, such court may, as a part of its decree or judgment in such case, revoke the certificate of license under which such contractor is operating at the time of the aforementioned wrongdoing.

(2) It is the duty of the clerk of the court to notify the executive director of the board of such revocation.

(b) The board may reissue a license to any person, firm or corporation whose license has been revoked; provided, that all of the members of the board vote in favor of such reissuance for reasons the board may deem sufficient.

(c) The executive director shall immediately notify the secretary of state and the clerk of each county, of any revocation of a license or the reissuance of a revoked license.

(d) The board has the power to revoke or suspend any license or renewal granted by it for any of the reasons stated in this section, or for a failure to observe the terms and conditions of any license or renewal granted under the provisions of this chapter or any bylaws, rules or regulations adopted or promulgated by it as provided in § 62-6-108, or for a violation of the terms of any license.

(e) Notwithstanding the provisions of the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, relative to the amount of civil penalties that may be imposed, the board may impose a civil penalty not to exceed five thousand dollars (\$5,000) per offense against any person or firm who violates the terms and conditions of an existing license to engage in contracting or against any person or firm who engages in unlicensed contracting.

(f) The board shall, in all cases before hearing any charges against a contractor, furnish a written copy of the charges against the accused, including notice of the time and place where the charges will be heard, and give reasonable opportunity for the accused to be present and offer any evidence the accused may wish. The accused shall have the waivable right to an attorney if so desired.

(g) The affirmative vote of a majority of the board is necessary to revoke or suspend a license or renewal.

(h) The board may refuse to issue or renew a license to any person, firm or corporation for lack of financial stability, lack of expertise, submission of false evidence with regard to application of license or renewal, conviction of a felony, and any other

conduct which constitutes improper, fraudulent or dishonest dealing, or violation of the statute.

Section _____. A covenant promise, agreement or understanding in or in connection with or collateral to a contract or agreement relative to the construction, alteration, repair or maintenance of a building, structure, appurtenance and appliance, including moving, demolition and excavating connected therewith, purporting to indemnify or hold harmless the promisee against liability for damages arising out of bodily injury to persons or damage to property caused by or resulting from the sole negligence of the promisee, the promisee's agents or employees, or indemnitee, is against public policy and is void and unenforceable.

Section _____.

(a) Any licensee may retire such licensee's license by submitting a form prescribed by the board accompanied by the current active license certificate, and a fee of twenty-five dollars (\$25.00). Upon receipt of an acceptable application to retire, the board shall issue a retired inactive license certificate to the contractor. The holder of a retired license shall not be entitled to practice as a contractor until the licensee is reinstated.

(b) Any licensee who is not engaged in work or activities which require a contractor's license may apply for a retired license.

(c) A retired license shall be valid for a period of one (1) year from the annual renewal date. If the inactive licensee wishes to remain inactive for any portion of a subsequent calendar year, the licensee shall pay an additional inactive fee of twenty-five dollars (\$25.00), on or before the annual renewal date of each such year.

(d) The board shall not refund any of the renewal fee which a licensee may have paid prior to the receipt of the application to retire.

(e) A retired license may be reinstated by submitting an application acceptable to the board, by paying the full renewal fee for an active license and by fulfilling all other

requirements of this chapter. No examination shall be required to reinstate a retired license.

(f) The retired status of a license shall not bar any disciplinary action by the board against a licensee for any of the causes provided in this chapter.

(g) In no event may a retired license be renewed for more than seven (7) years dated from the time of initial application.

(h) No retired license is transferable.

SECTION 27. Tennessee Code Annotated, Section 62-37-114, is amended by designating the existing language as subsection (a) and by adding the following language as new subsections to be designated as follows:

(b)

(1) Any person, firm or corporation who engages or offers to engage in residential contracting without a license as required by § 62-37-104, or who violates the terms and conditions of any license or renewal granted by the board pursuant to this chapter, commits a Class A misdemeanor. The penalties imposed by this subdivision shall not apply to a person who engages a residential contractor without a license for the purpose of constructing a residence for the use of such person.

(2) Any person, firm or corporation who engages or offers to engage in residential contracting without a license as required by § 62-37-104 is ineligible to receive such license until six (6) months after a determination by the board that a violation has occurred.

SECTION 28. Tennessee Code Annotated, Section 62-37-106(a), is amended by deleting the word “license” wherever it appears and by substituting instead the language “home improvement contractor license”.

SECTION 29. Tennessee Code Annotated, Section 62-37-107(a), is amended by deleting the language “No contractor’s license” and by substituting instead the language “No home improvement contractor’s license”.

SECTION 30. Tennessee Code Annotated, Sections 62-37-127, 62-37-128, 62-37-129, 62-37-130, 62-37-131, 62-37- 132 and 62-37-133 are amended by deleting such sections in their entirety.

SECTION 31. Tennessee Code Annotated, Section 62-37-134, is amended by deleting the citations “62-37-127 – 62-37-133” and by substituting instead the language “title 62, chapter 37, part 2”.

SECTION 32. This act shall take effect July 1, 2006, the public welfare requiring it.